REMARKS

Claims 73 – 76 and 78 – 90 are pending. Claims 73 – 76, and 78 - 90 stand rejected. Claims 1- 72 and claim 77 have been previously withdrawn from consideration.

Claims 73 – 76 and 78 – 90 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The examiner states that the "non-rigid flow tube" is not described in the specification and the original disclosure does not convey using a "non-rigid flow tube". The examiner does acknowledge that the original disclosure teaches using a fluoropolymer flow tube such as PFA instead of stainless steal.

MPEP 2163.04: "The examiner has the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in applicant's disclosure a description of the invention defined by the claims." *In re Wertheim*, 541 F.2d 257, 265, 191 USPQ 90, 98 (CCPA 1976). The examiner has not fulfilled his burden of presenting evidence why persons skilled in the art would not recognize in applicant's disclosure a description of the invention defined by the claims. The application gives an example of a flow tube made from PFA. PFA is described in the spec (page 3 lines 28 – 30) as "soft and flexible unlike metal". Therefore a flow tube made from PFA is an example of a non-rigid flow tube. The examiner stated that the applicant "fails to provide other examples such as rubber or closed cell foam flow tubes" but does not explain why one of ordinary skill in the art would need more than one example to recognize that applicant had possession of the invention at the time of filing with the example used in the specification. Therefore the examiner should withdraw this rejection.

The claim for a non- rigid flow tube is well supported in the specification. Rigid is defined as: "very firm rather than pliant in composition or structure : lacking or devoid of flexibility : inflexible in nature". *Webster's Third New International Dictionary, Unabridged.* Merriam-Webster, 2002. http://unabridged.merriam-webster.com (20 Jun. 2005). The application describes typical flow tubes as being fabricated from metal (see page 3 lines 1 – 4). One example of the applicant's invention is a flow tube made out of PFA. PFA is described in the spec (page 3 lines 28 – 30) as "soft and flexible unlike metal". In addition, the claim requires "holding the section of the non-rigid flow tube extending between the two legs in an essentially straight configuration while the inserted adhesive cures". If the flow tube was rigid, the flow tube would not need to be held in "an essentially straight configuration". The tube needs to be held in "an essentially straight configuration" because the tube is made from a non-rigid (i.e. flexible) material. The specification reasonably conveys to one skilled in the relevant art that the inventor, at the time of the application was filed, had possession of the claimed invention. Therefore this rejection should be withdrawn.

Claims 73 – 76 and 78 – 90 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The examiner states that the scope and meaning for the term "non-rigid flow tube" is unclear.

"In rejecting a claim under the second paragraph of 35 USC 112, it is incumbent on the examiner to establish that one of ordinary skill in the pertinent art, when reading the claims in light of the supporting specification, would not have been able to ascertain with a reasonable degree of precision and particularity the particular area set out and

circumscribed by the claims." *Ex parte* Wu, 10 USPQ 2d 2031, 2033 (B.P.A.I. 1989).

A non-rigid flow tube is clear in its scope and meaning when read in light of the specification. Given the ordinary meaning of rigid (see above), and the examples of prior art flow tubes fabricated from metal or glass as detailed in the specification, non-rigid flow tubes would be "pliant in composition" and therefore would not be "inflexible". The examiner states that it is unclear if non-rigid reads on stainless steal. Stainless steal is a metal. Metal is a substance that is a crystalline solid at or near room temperature, and is typically considered rigid. PFA is described in the spec (page 3 lines 28 – 30) as "soft and flexible **unlike metal**" (emphasis added). Therefore one of ordinary skill in the art easily can ascertain with a reasonable degree of precision and particularity that stainless steal is not "non-rigid". One of ordinary skill in the pertinent art, when reading the claims in light of the supporting specification, would easily have been able to ascertain with a reasonable degree of precision and particularity the particular area set out and circumscribed by the claims. Therefore this rejection should be withdrawn.

Claims 73 is rejected under 35 U.S.C 103(a) as being unpatentable over Nishiyama et al (US 5307689) in view ofvan der Pol (US 6336370) and either Lanham et al (WO 01/65213) or Gomi et al (EP 997709), and in view of Japan 877 (JP 60-112877) and Storick (WO 95/06562).

Claim 73 requires holding the section of the non-rigid flow tube extending between the two legs in an essentially straight configuration while the adhesive cures (emphasis added). The prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Nishiyama's tube is made from a rigid material (stainless steel) and therefore the

tube does not need to be held in a straight configuration during assembly. The rigid tube is inherently straight (when properly manufactured). The rigid tube may be held in place with respect to the base during welding. But because the tube is rigid, it does not need to be held in an essentially straight configuration while adhesive cures. The tube is being held in place in relation to another part and is not being held in an essentially straight configuration. Binnie also teaches holding pieces in place relative to other pieces during assembly. But neither Nishiyama's or Binnie have a non-rigid part that needs to be held in an essentially straight configuration while adhesive cures. Holding one piece in place relative to another piece is very different than holding a non-rigid flow tube in an essentially straight configuration. Holding a flow tube at the two ends during assembly may work for a rigid flow tube, but some other method must be used to keep a non-rigid flow tube straight during assembly. None of the cited art teach how a non-rigid flow tube extending between two legs can be held in an essentially straight configuration while an adhesive cures, therefore the claim is allowable.

Claims 74 – 76 and 78 – 90 depend on allowable claim 73 and are therefore allowable.

Any fees may be charged to deposit account 502622.

Respectfully submitted,

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